

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.492 OF 1983

Indian Overseas Bank Plaintiff

V/s.

M/s.Trioka Textile Industries & Ors. Defendants

Mr.Parag Patil i/b Thakordar & Madgaonkar for the
Plaintiff.

None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 7TH SEPTEMBER, 2006.

P.C. :

1. The suit is filed to recover a sum of Rs.61,985=64 ps. together with interest and for enforcement of the hypothecation created by the Defendants in favour of the Plaintiff. The suit is filed to recover the aforesaid amounts which were lent and advanced to Defendant No.1 by way of cash credit hypothecation facility. Defendant Nos.2, 3 and 4 are the partners of Defendant No.1.

2. In view of the Plaintiff having agreed to grant the said facility, the parties executed the usual documents including a letter of sanction, demand

promissory note in the sum of Rs.50,000/-, letter of hypothecation in respect of the goods such as raw-material, work in progress and finished goods, another letter of hypothecation in respect of the materials belonging to Defendant No.1 and a letter of continuing the security.

3. The Plaintiff's case is that despite having availed of the said facility, the Defendants failed and neglected to repay the same. Correspondence ensued in the course of which the Defendants did not really deny their liability.

4. A written statement has been filed on behalf of Defendant No.2. The main defence is that Defendant No.4 is the wife of the Bank Manager of the Plaintiff Bank and sister of Defendant No.3 ; that the partnership was formed at the instance of Defendant Nos.3 and 4 to take advantage of the position of the said Bank Manager. Defendant No.2 admitted having executed the said documents. He however, submitted that the promissory note was for over draft facility which was availed of and that all other documents were executed on the advice and as per the instructions of Defendant Nos.3 and 4. There is a general repudiation of liability. Defendant No.2 has also agreed in

paragraph 10 to settle the matter with the Plaintiff.

5. The following issues were framed on 7.12.2001 which read as under :-

ISSUES

- 1) Whether the plaintiffs are entitled to a decree of an amount of Rs.61,985=65 as described in Exh.'J' to the plaint against the defendants ?
- 2) Whether the plaintiffs are entitled to further interest on Rs.61,985=65 thereon at the rate of 18% p.a. with quarterly rests from 9th October, 1982 till payment or realisation ?
- 3) Whether the plaintiffs are entitled to all costs, charges and expenses that ought to be incurred in connection with the sale of the hypothecation goods as well as machineries ?
- 4) Whether the plaintiffs are entitled to a decree and order that the hypothecation goods and machineries specified in respective

letter of hypothecation being Exhs. 'C' and 'D' to the plaint be sold by and order and directions of this Hon'ble Court and that the net sale proceeds be appropriated towards satisfaction of the several amounts due as under issue Nos.1,2 and 3 ?

- 5) Whether the defendant No.2 proves that the defendant No.1 had no machineries and inspite of this application was presented for cash credit facility by defendant Nos.3 and 4 as allege din paragraphs 2 and 3 of the written statement ?
- 6) Whether the defendant No.2 proves that documents mentioned in paragraph 7 of the plaint were signed by him as advised by bank Manager, defendant Nos.3 and 4 as alleged in paragraph 4 of the written statement ?
- 7) Costs ?
- 8) What order / decree ?

6. The main disputes are issue Nos.5 and 6. The findings on the other issues will depend upon the

finding on issue Nos.5 and 6.

7. The Plaintiff has led the evidence by filing an affidavit of one C.K. Chakarapani, its Chief Manager and constituted attorney in lieu of the oral evidence. Secondary evidence has been led of some of the documents after establishing the case for leading secondary evidence. The Defendants are absent and there is no cross-examination. There is no objection to the said documents. Hence the documents are taken on record and marked Exhibit "A" collectively.

8. The Plaintiff's witness has deposed as true all facts stated in the plaint. He has produced the documents which have been tendered and admitted in evidence. A copy of the accounts certified under the Bankers Books Evidence Act is also tendered and marked in evidence.

9. It is pertinent to note that the execution of the documents is not denied. In fact it is expressly admitted. The accounts are not in dispute. The Plaintiff has thus established its case. There is nothing on record that militates against the averments in the plaint or evidence contained in the affidavit in lieu of the examination in chief.

10. On the other hand, the Defendants have remained absent. The onus of establishing the case on issue Nos.5 and 6 was clearly on the Defendants. They have failed to do the same. There is nothing on record that establishes the same.

11. In the circumstances, the suit is decreed in terms of prayer (a). The other reliefs are not pressed.

Refund as per rules.